

CIVIL REVISION APPLICATION No 1081 of 2000

Hon'ble MR.JUSTICE K.M.MEHTA

[illegible]

-----  
 JYOTIBEN SAMIR PAWAR D/O                      RAMESHCHANDRA N PAWAR

SAMIR BHASKARRAO PAWAR

MR ANIL S DAVE and MS. BANNA DATTA for Respondent No. 1

C.A.V. JUDGEMENT

1. Smt. Jyotiben Samir Pawar, petitioner, appellant-original plaintiff, has filed this Revision Application against the judgement and order dated 7.9.2000 passed by the 5th Joint Civil Judge (S.D.), Vadodara, in Special Civil Suit No. 241 of 2000 wherein the learned judge was pleased to partly allow the application and direct Shri Samir Bhaskar Rao Pawar, defendant husband to pay Rs. 1,500/- per month as an interim maintenance to plaintiff from the date of suit till final disposal of the suit and thereby modified the earlier order dated 23.3.2000 wherein the learned judge was pleased to fix Rs. 3,000/as maintenance which was to be paid by the defendant to the plaintiff.

2. The facts giving rise to this revision application are as under:-

2.1 Smt. Jyotiben Samir Pawar- original plaintiff has married on 30.1.1996 as per Hindu rites with Shri Samir Bhaskar Rao Pawar- original defendant. The applicant Smt. Jyotiben Samir Pawar filed Special Civil Suit No. 241 of 2000 against the defendant husband Shri Samir Bhaskar Rao Pawar under the provisions of Hindu Adoption and Maintenance Act, 1956, for claiming maintenance. The said suit was filed on 23.3.2000. In the suit it has been stated that after marriage took place in 1996 for about six months both husband and wife lived happily. Thereafter, some difference and dispute arose, the details of which have been stated and alleged in the Special Civil Suit No. 241 of 2000. In the suit it was stated that the respondent husband has a lot of movable and immovable properties and various sources of income and according to the applicant wife the husband has income of Rs. 56,000/- per month and other jewelleryes. Therefore, she claimed maintenance of Rs. 20,000/- per month from the respondent-husband in this behalf and cost of litigation of Rs. 25,000/-. The respondent-husband filed his reply on 5.4.2000 denying the said contention in this behalf. The wife thereafter also filed rejoinder and produced certain documents in this behalf.

2.2 The learned trial judge as stated above initially passed an interim order on 23.3.2000 fixing Rs. 3,000/- per month as maintenance allowance. However, after hearing both parties i.e. the husband and wife, by his order below Exh. 6 the learned trial judge has fixed Rs. 1,500/- per month as maintenance allowance which is to be paid by the husband-defendant to the wife-plaintiff.

3 Being aggrieved and dissatisfied with the

aforesaid order the applicant-wife has filed this revision application before this court on several grounds. Smt. Jyotiben Samirbhai Pawar, party-in-person, herself, argued the matter and stated that the learned judge has seriously erred in coming to the conclusion that the income of the husband is Rs. 8,000/per month. According to her, the respondent-husband has a shop in Vadodara which is given on rent and the respondent-husband is receiving Rs. 7,000/- as monthly rent from the said shop. She has also stated that the respondent-husband is carrying on business in the name and style of M/s. Daylight Industries, factory situated at GIDC, Savli, Dist. Vadodara, valued at Rs. 30 lakhs and he received Rs. 20,000/- per month. He is also carrying on business of running taxi one at Vadodara and another at Anand by which he is earning Rs. 10,000/- and Rs. 12,000/- per month by hiring the same. He also received Rs. 30,000/per month by giving a xerox machine on hire. He is also carrying on another business of commission and there also he earned Rs. 12,000/- per month. So in all, according to the plaintiffparty-in-person, about Rs. 56,000/- is earned by the respondent-husband. Therefore, the learned judge by assessing monthly income of the respondent husband at Rs. 8,000/- has grossly undervalued the income of the defendant husband.

4. On the other hand Shri Anil Dave along with Ms. Banna Datta, learned advocates for the respondent-husband, stated that the husband is deriving Rs. 2,000/- per month on letting out the shop. He also receives monthly income of Rs. 2,000/- in connection with the business which is carried on in the name and style of M/s. Daylight Industries. He also receives income of Rs. 5,000/- per month on hiring taxi at Vadodara and as regards taxi at Anand, the respondent husband has sold off the car. As regards xerox machine, the respondent husband earns Rs. 2,000/- per month. As regards income from commission, they have pointed out that the respondent husband has no such income. They have invited my attention to the reply filed by the defendant before the Trial Court and the husband has also filed affidavit before me dated 27.11.2000 and also produced certain documents in this behalf.

5. I have gone through the papers produced by the plaintiff wife, copy of the plaint, application for amendment, application for interim alimony and other relevant documentary evidence, particularly, profit and loss account for the year 31.3.1998 of Samir Travels and Samir Xerox, the business which the respondent husband is

carrying on, documentary evidence to show that the car belonged to the respondent husband. The applicant-wife has also produced Deed of Dissolution of partnership where the respondent-husband along with his uncle, father, aunty, carrying on business where the respondent husband has 50% share in business. She has also produced assessment of Vadodara Municipal Corporation to demonstrate that certain immovable properties in the name of the husband. She has also relied on copy of the plaint, particularly, paragraph Nos. 10, 11 and 12 wherein the details of the properties are mentioned. She has also given the details of income derived by the respondent husband from travel agencies, immovable properties, taxi business, xerox machine etc. The details regarding bank locker are also given. According to the applicant wife, the respondent husband earns monthly business income of Rs. 22,000/- from Samir Travels, about Rs. 10,000/- per month from vehicle hiring, Rs. 20,000/- per month from M/s. Daylight Industries, Rs. 4,000/- per month from xerox machine etc.

6. The respondent husband has in his reply totally denied all these averments made by the applicant-wife and stated that he only earns income of about Rs. 10,000/- per month from various sources. The learned counsel for the respondent stated that some of the income is belonging to the family of the respondent husband and not to the respondent husband alone. Therefore, the applicant wife is not right in saying that all the income belonged to the respondent husband.

7. On behalf of husband an affidavit has been filed before this court along with some details regarding computation of income which has been filed before the authority for the year 1999-2000 regarding the partnership firm where it has been shown that salary paid to one partner at Rs. 50,000/- and salary to another partner is also shown with the same figure in all Rs. 1 lakh. It was submitted that the respondent husband, his brother, his aunty and his mother are partners and that is why one lakh is taken away as salary in this behalf. Profit and loss account for the year 31.3.2000 of M/s. Daylight Industries has been produced. The gross profit is shown at Rs. 3,23,323/-. Secondly, no loss was shown in this behalf. It was stated that the respondent husband has only 30% share in the partnership firm and Rs. 25,000/- per year has been taken as remuneration from the said partnership firm. Extract of passbook from the State Bank of India was also produced.

8. From the statement made by the wife and from the statement of the husband, it appears that applicant-wife has tried to exaggerate income of the husband whereas on the other hand the respondent-husband has tried to suppress the income in this behalf. From the record of the case it appears that the respondent husband must be receiving more income by way of rent by letting out the shop which is situated in the heart of the Vadodara city. He is also receiving large amount of income from the partnership firm and also from other sources. So according to me about Rs. 15,000/to Rs. 18,000/monthly income must have been derived from various other sources by the husband. I do not agree with the view of the learned judge when the learned judge states that the respondent husband was only receiving income of Rs. 8,000/- per month. According to my view, at least income of Rs. 15,000/- to Rs. 18,000/- per month must be received by the respondent husband particularly when income from various sources have been shown. It is no doubt, true that the respondent husband has shown loss in the business of partnership firm but that is only after paying salary to all the members of the family and this is only with a view to divert income from one hand to another for the purpose of income tax but the fact remains that brother of the respondent husband, his mother, aunty are partners of the partnership firm and received salary income. Even the shop which is situated in the heart of the city of Vadodara can fetch much more income than Rs. 2000/per month. Even the income from carrying on business of taxi is also a lucrative business in this behalf.

9. Before I consider the rival submissions in this behalf, let me refer to Section 24 of the Hindu Marriage Act which is a relevant statutory provision. Section 24 of the Hindu Marriage Act reads as follows:-

"Maintenance pendente lite and expenses of proceedings - Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and mnthly, during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

10. The applicant-wife has relied on the judgement of this court in the case of DHIRAJBEN PRABHUDAS PARMAR VS. RAMESHCHANDRA SHAMBHULAL YADAV reported in AIR 1983 Gujarat 215. After considering the provisions of the Hindu Marriage Act, Section 24 and after referring to the judgement of the Bombay High Court in the case of DINESH MEHTA VS. SMT. USHA DINESH MEHTA reported in AIR 1979 Bom 173 and after dissenting from judgement in the case of SMT. SUSHILA DEVI VS. DHANI RAM reported in AIR 1965 HIM. PRA. 12, the court was pleased to observe in paragraphs 5, 6 and ultimately in para 8. The relevant observations are as under:-

"para 5 - It must be stated that this rule of thumb, as far as 1/5th of the amount of income is concerned, has no reasonable basis except following the provisions of Indian Divorce Act, 1869. Whenever Courts awards even interim alimony social status of the parties, earning of the husband who has to pay maintenance, liability of the wife, require (sic) of particular treatment, etc. all are to be considered while awarding interim alimony or even at the time of passing the final order of maintenance.

para 6 - Section 24, Hindu Marriage Act, 1955, speaks of fixing a reasonable amount, and that reasonableness has to be considered from some of the factors mentioned above and also other factors which may crop up in a peculiar case. Along with that, the Court also should not ignore the legal obligations of the husband to earn and maintain the wife. It should not be forgotten that there may be obligations of the husband to maintain other members of his family, and the Court cannot overlook them even though they may not be legal obligations. Court has also to see whether the wife is earning so that the husband may not be saddled with the expenses and ultimately the Court will pass the order considering all the aforesaid relevant factors. For considering those factors, there cannot be any specific formula which will be available in all cases, but each case will depend on its particular set of circumstances. Therefore, this rule of thumb of 1/5th cannot be applied in all cases and should not be encouraged also.

Para - 8 .....In the instant case, if this rule is applied, though I would venture to say that

this rule is not an inflexible formula or rule and it is not necessary that it should be applied in all cases, because sometime the family of the husband may be large and the wife may be obliged to take a small share; in such a case this rule also cannot be said to be universally applicable. At any rate, considering the claim of the husband in this case, as stated earlier, the family consisted of himself, his wife and parents, i.e. four persons. So, if the income of Rs. 1900/- is divided by '4', then the wife would be entitled to an amount of Rs. 475/- per month, and this should have been awarded. Now the wife is getting an amount of Rs. 150/- per month as per the order of the Criminal Court. In this matter she will be entitled to an amount of Rs. 325/per month as alimony pendente lite instead of an amount of Rs. 280/- per month as awarded by the trial Court."

11. The applicant-wife has also relied on the decision in the case of SUNIL HARISHBHAI PATEL VS. MRS. BIJAL SUNIL PATEL reported in 1994(1) G.L.H. 78.

12. In my view the right of a wife for maintenance is an incident of the status or estate of matrimony. In general, therefore, the husband is bound to defray the wife's costs of any proceeding under the Act and to provide for her maintenance and support pending the disposal of such proceeding. The doctrine of alimony, which expression in this strict sense means allowance due to wife from husband or separation from certain causes, has its basis in social conditions in England under which a married woman was economically dependent and almost in a position of tutelage to the husband and was intended to secure justice to her while prosecuting or defending proceedings under matrimonial law. In my view, in view of Section 24 of the Hindu Marriage Act and the decision rendered above that the law relating to matrimonial causes provides for rules for payment of maintenance pendente lite and expenses of proceedings by the husband to the wife. Section 24 of the Hindu Marriage Act adopts those principles and goes one radical step further when it prescribes that any such order can be made not only in favour of the wife but also in favour of the husband.

13. In my view, therefore, when I assess income of about Rs. 15,000/- to Rs. 18,000/- per month of the respondent husband, maintenance of Rs. 3,000/- per month to the applicant wife may be given during the pendency of

the proceedings. Therefore, to that extent I quash and set aside the order of the learned judge dated 7.9.2000 wherein the learned judge has granted Rs. 1,500/- per month as interim maintenance to the applicant-wife from the date of the suit till final disposal of the same and I confirm the order dated 23.3.2000 wherein the learned judge has awarded Rs. 3,000/- per month in the said suit from the date of application till final disposal of the same as an interim alimony.

14. Before parting, I may observe that the observations are based on the documentary evidence which are produced before me in revision application which are prima facie evidence. If in near future the applicant-wife produces any other evidence, she is entitled to file a separate application for maintenance and the respondent husband can file reply and the learned judge will decide the amount of maintenance in this behalf. However, while fixing the maintenance the learned judge will take into consideration Section 24 of the Hindu Mar

case of DHIRAJBEN PRABHUDAS PARMAR (supra). The revision application is allowed accordingly with no order as to costs.

00000

(pkn)

19.12.2000